

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

IN RE:

Ivy K. Nimley

Taylor, Bean & Whitaker Mortgage Corp.

VS.

Ivy K. Nimley

CHAPTER 13
CASE NO. 15-10747-DF

MOTION FOR RELIEF FROM STAY AND MEMORANDUM IN SUPPORT THEREOF

To the Honorable Diane Finkle:

Taylor Bean & Whitaker Mortgage Corp., your moving party in the within Motion, hereby requests that the Court grant relief from the Automatic Stay imposed by 11 U.S.C. §362 and respectfully represents:

1. The movant has a mailing address of 5016 Parkway Blvd., Suite 200, Charlotte, NC 28217.
2. The debtor, Ivy K. Nimley, has a mailing address of PO Box 72808, Providence, RI 02907.
3. On April 13, 2015, the debtor filed a petition under Chapter 13 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Rhode Island.
4. The movant is the holder of a first mortgage on real estate in the original amount of \$248,000.00 given by Ivy Nimley to Mortgage Electronic Registration Systems, Inc. on or about August 30, 2006. Said mortgage is recorded with the Providence Land Records at Book 8254, Page 23 and covers the premises located at 162 Courtland Street, Providence, RI 02909.

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5. Said mortgage secures a note given by Ivy Nimley to Taylor, Bean & Whitaker Mortgage Corp. in the original amount of \$248,000.00. Taylor, Bean & Whitaker Mortgage Corp. endorsed the note in blank. The movant is the holder of the note.
6. Said mortgage was assigned by Mortgage Electronic Registration Systems, Inc. to Taylor, Bean & Whitaker Mortgage Corp. Said assignment is recorded with the Providence Land Records at Book 9955, Page 71. A copy of the mortgage, note and assignment is annexed hereto as **Exhibit A**.
7. As of July 8, 2015, approximately \$430,792.78 in principal, interest, late fees and other charges was due with regard to Taylor, Bean & Whitaker Mortgage Corp's note and mortgage.
8. There is also an Assignment of Rents provision securing the obligation.
9. There are the following encumbrances on the property:

<u>Name of Creditor</u>	<u>Type of Lien</u>	<u>Amount Owed</u>
Taylor, Bean & Whitaker Mortgage Corp.	First Mortgage	\$430,792.78
Taylor, Bean & Whitaker Mortgage Corp. ¹	Second Mortgage	\$70,313.20
Total Secured Encumbrances:		\$501,105.98

10. The pre-petition arrearage is approximately \$180,797.29.
11. According to the debtor's schedules, the fair market value of the subject property is \$189,400.00.
12. The debtor has no equity in the property.

¹ To be stripped off pursuant to the debtor's Chapter 13 Plan.

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13. The total post-petition arrearage due as of July 8, 2015 is \$4,235.28, plus reasonable attorney's fees and costs.
14. The property is not necessary for a successful reorganization of the debtor.
15. The movant seeks relief from stay as a secured creditor to enforce its rights under its loan documents and applicable law. In support thereof, the movant states that it is entitled to relief as follows:

I. Pursuant to 11 U.S.C. 362 (d)(1) for cause on the basis that the debtor has not made post petition payments, and that the debtor has failed to provide the plaintiff with adequate protection; and

II. Pursuant to 11 U.S.C. 362 (d)(2) on the basis that the debtor has no equity in the subject property and the property is not necessary for effective reorganization.

WHEREFORE, the movant prays that it, and its successors and/or assigns, be granted relief from the stay for the purpose of: (i) exercising its rights under its agreements with the debtor and under applicable law, including, without limitation, taking possession of the mortgaged premises and/or foreclosing or accepting a deed in lieu of foreclosure of its mortgage on said premises, and bringing such actions, including, without limitation, eviction proceedings, as are permissible by law; and (ii) the Court waive the provisions of F.R.B.P. 4001 (a)(3); and (iii) the Court order such other and further relief as may be just and proper.

[SIGNATURE APPEARS ON THE FOLLOW PAGE]

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Respectfully submitted,
Taylor, Bean & Whitaker Mortgage Corp.
By its Attorney

/s/ Tatyana P. Tabachnik
Tatyana P Tabachnik, Esquire
RI #8911
Harmon Law Offices, P.C.
P.O. Box 610389
Newton Highlands, MA 02461-0389
(617) 558-0500
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Dated: July 20, 2015

Within fourteen (14) days after service as evidenced by the certification and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Bankruptcy Court Clerk's Office, 380 Westminster Mall, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed within the time allowed herein, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.

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CERTIFICATE OF SERVICE

I, Tatyana P. Tabachnik, Esquire, state that on July 21, 2015, I electronically filed the foregoing document with the United States Bankruptcy Court for the District of Rhode Island on behalf of Taylor, Bean & Whitaker Mortgage Corp using the CM/ECF System. I served the foregoing document on the following CM/ECF participants:

Gary L. Donahue, Esquire, Assistant U.S. Trustee

John Boyajian, Esquire, Chapter 13 Trustee

Jack D. Pitts, Esquire for the Debtor

Timothy W. Larson, Esquire for U.S. Bank N.A., as trustee, on behalf of the holders of the J.P. Morgan Mortgage Acquisition Trust 2006-CH2 Asset Backed Pass-Through Certificates, Series 2006-CH2

I certify that I have mailed by first class mail, postage prepaid the documents electronically filed with the Court on the following non CM/ECF participants:

/s/ Tatyana P. Tabachnik
Tatyana P. Tabachnik, Esquire
RI# 8911

Ivy K. Nimley
PO Box 72808
Providence, RI 02907

Ivy K. Nimley
162 Courtland Street
Providence, RI 02909

Rhode Island Division of Taxation
Bankruptcy Unit
One Capitol Hill
Providence, RI 02908

Taylor, Bean & Whitaker
c/o Roundpoint Mortgage Servicing
PO Box 19409
Charlotte, NC 28219

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